IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs February 14, 2006

STATE OF TENNESSEE v. CHRIS ALLEN DODSON

Direct Appeal from the Circuit Court for Marion County
Nos. 6702V.1, 7245CV.1 Buddy Perry, Judge

No. M2005-01766-CCA-R3-CD - Filed March 31, 2006

The probation of the defendant, Chris Allen Dodson, was revoked based upon: 1) New law violations consisting of possession of drug paraphernalia, criminal attempt to manufacture methamphetamine, possession of Schedule II drugs, and possession of Schedule IV drugs; and 2) Failure to notify his probation officer of the new law violations. On appeal, the defendant contends that the trial court erred in considering evidence obtained as a result of an illegal search. Upon review, we conclude that the proof presented was the product of a valid consensual search and that the trial court did not abuse its discretion in revoking the defendant's probation.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Philip A. Condra, District Public Defender, and Charles D. Curtis, II, Assistant Public Defender, for the appellant, Chris Allen Dodson.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; James Michael Taylor, District Attorney General; and Sherry D. Gouger, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

The defendant plead guilty to the offenses of Possession of Substances with the intent to manufacture Schedule II drugs and Theft over $1000. The defendant received sentences of two years on the drug charge and two years and six months on the theft charge, with all sentences to run consecutively. An agreement was entered that if the defendant served thirty days in an "in-house" drug rehabilitation program, his jail sentence would be suspended. On May 4, 2005, the defendant was arrested for the offenses of possession of drug paraphernalia, criminal attempt to manufacture

methamphetamine, and possession of Schedule II and IV drugs. On June 8, 2005, a probation violation warrant was filed, alleging:

1) New law violations (possession of drug paraphernalia, criminal attempt to manufacture methamphetamine, and possession of Schedule II and IV drugs);
2) A violation of rule two of his rules of probation (I will report all arrests, including traffic violations, immediately, regardless of the outcome, to my Probation Officer); and
3) A violation of rule eight of his rules of probation (I will not use intoxicants [beer, whiskey, wine, etc.] of any kind, to excess, or use or have in my possession narcotic drugs or marijuana. I will submit to random drug screens as directed).

Following a hearing on the probation violation, the court issued an order revoking the defendant's probation and ordering him to serve the balance of his sentence. The defendant's sole contention on appeal is that the trial court abused its discretion in considering evidence obtained as a result of a search following a traffic stop.

At the revocation hearing, Trooper Tim Garner testified that he was employed with the Tennessee Highway Patrol and was on regular patrol in Grundy County on the night of the defendant's arrest. While on patrol, Trooper Garner observed the defendant's vehicle driving at night with an inoperable headlight and taillight and an expired license plate. Trooper Garner pulled the defendant over for the purpose of issuing citations for the three traffic violations. Trooper Garner approached the vehicle and noticed a chemical odor that he commonly associated with methamphetamines coming from the car. Upon further investigation, Trooper Garner noticed an open red bag with a Mason jar sticking out of it in the back seat of the car. The defendant told Trooper Garner that the bag was his and granted the trooper consent to search the bag. The bag contained three mason jars, a set of scales, approximately 12.2 grams of wet red phosphorus, and a bottle of hydrogen peroxide, all of which Trooper Garner associated with the manufacture of methamphetamine. After Trooper Garner searched the bag, the defendant then claimed the bag did not belong to him. Trooper Garner placed the defendant under arrest and discovered five pills wrapped in cellophane in the defendant's front pocket. The defendant stated that the pills were Xanax.

Ted Anthonisen testified at the revocation hearing that he was employed as a probation officer and was charged with supervising the defendant. He stated that the defendant failed to report that he had been arrested again on May 4, 2005. Anthonisen met with the defendant on May 9, 2005, and on May 16, 2005, and the defendant did not report his May 4, 2005 arrest at either meeting. During the May 16, 2005 appointment, the defendant tested positive for the use of methamphetamine.

Analysis

A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the defendant has violated a condition of probation.

T.C.A. §§ 40-35-310, -311 (2003). The decision to revoke probation rests within the sound discretion of the trial court. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court that a violation of probation or community correction sentence has occurred. Id.; State v. Gregory, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997). Proof of a violation need not be established beyond a reasonable doubt, and the evidence need only show that the trial judge exercised a conscientious and intelligent judgment, rather than acted arbitrarily. Gregory, 946 S.W.2d at 832; State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995).

On appeal, the defendant alleges that the trial court erred in basing his violation, in part, on the new law violations of possession of drug paraphernalia, criminal attempt to manufacture methamphetamine, and possession fo Schedule II and IV drugs because he contends the new law violations resulted from an illegal search.

The Fourth Amendment to the United States Constitution grants the right to be secure from unreasonable searches and seizures and prohibits the issuance of warrants without probable cause. Article I, § 7 of the Tennessee Constitution is identical in purpose and intent with the Fourth Amendment. State v. Troxell, 78 S.W.3d 866, 870 (Tenn. 2002). Under both constitutions, a warrantless search or seizure is presumed to be unreasonable, and the resulting evidence is subject to suppression unless the State demonstrates the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement. State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000).

One exception is a search conducted pursuant to a person's consent. Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973). The consent must be "unequivocal, specific, intelligently given, and uncontaminated by duress or coercion." State v. Simpson, 968 S.W.2d 776, 784 (Tenn. 1998) (quoting State v. Brown, 836 S.W.2d 530, 547 (Tenn. 1992)). It is not necessary for the officer to inform the person of the person's right to refuse consent. United States v. Drayton, 536 U.S. 194, 206 (2002).

Further, even if consent is given, the search must not exceed the scope of the consent given. Troxell, 78 S.W.3d at 871. Any express or implied limitations regarding the time, duration, area, or intensity of police activity necessary to accomplish the stated purpose of the search and the express object of the search are relevant considerations in determining the scope of the consent to search. Florida v. Jimeno, 500 U.S. 248, 251 (1991). The objective "reasonable person" standard, not the subjective intentions of the parties, is implied in determining the scope of consent. Troxell, 78 S.W.3d at 872.

Upon review, we conclude that the trial court was well within its discretion in accepting the trooper's testimony that the defendant gave consent to search and ion finding by a preponderance of the evidence that the defendant possessed drug paraphernalia and Schedule II and IV drugs. The

State must only prove that a violation occurred by a preponderance of the evidence, and the trial court's revocation may only be overturned in the absence of any "substantial evidence" supporting revocation. Gregory, 946 S.W.2d at 832; Harkins, 811 S.W.2d at 82. In this case, the trooper's testimony regarding the traffic stop constituted substantial evidence and is sufficient to support the trial court's conclusion.

We also conclude that the revocation was proper because the trial court based its conclusion on an additional ground: the defendant's failure to report his arrest immediately to his probation officer as required by his rules of probation. The defendant's probation officer testified that the defendant never notified him of his new arrest. We conclude that either violation, standing alone, would have been sufficient to revoke the defendant's probation; however, taken together they provide compelling reason for revocation.

Conclusion

We affirm the trial court's revocation of probation.

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JOHN EVERETT WILLIAMS, JUDGE